

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

IN RE: REALPAGE, INC., RENTAL) Case No. 3:23-md-3071
SOFTWARE ANTITRUST) MDL No. 3071
LITIGATION (NO. II))
) This Document Relates to:
)
) 3:23-cv-00742
) 3:23-cv-00972

ORDER

After review of Apartment Income Reit Corporation's ("AIR") Motion to Dismiss Plaintiffs' Second Amended Consolidated Class Action Complaint (Doc. Nos. 568 and 569), Plaintiffs' response in opposition (Doc. No. 619) and AIR's reply (Doc. No. 636), as well as the competing Declarations of Swathi Bojedla (Doc. No. 620) and Judith P. Youngman (Doc. No. 637), the Court is perplexed and disappointed for the reasons below and rules as follows:


1. Plaintiffs' attempt to amend the Second Consolidated Class Action Complaint (Doc. No. 530) through the Declaration of Plaintiffs' counsel is in no way respectful of the Federal Rules of Civil Procedure, and thus the attempted amendment is not properly before the Court. As a result, the Court cannot properly consider AIR's motion. AIR's motion is **DENIED WITHOUT PREJUDICE**.

2. The competing declarations of counsel disclose a substantive and material dispute about what allegations in paragraph 68 of the Second Amended Consolidated Class Action Complaint Plaintiffs agreed to withdraw. Compare Doc. No. 637-1 at 10-11 September 11, 2023, 2:47 p.m. email with Doc. No. 637-1 at 2-3 September 19, 2023, 6:08 p.m. email, September 19, 2023, 6:49 p.m. email and September 20, 2023, 1:00 p.m. email.

3. Counsel for Plaintiffs and AIR shall meet and confer, in person, to resolve the above dispute within 5 days of this Order. If they are unable to do so, they shall meet with Magistrate Judge Barbara Holmes to resolve the dispute.

4. Consistent with the Federal Rules of Civil Procedure, the Plaintiff may file a motion to withdraw allegations, after conferring with AIR's counsel on same, within 20 days of this Order. AIR may refile its motion within 10 days of the Court's decision on Plaintiffs' motion.

IT IS SO ORDERED.



WAVERLY D. CRENSHAW, JR.
CHIEF UNITED STATES DISTRICT JUDGE